

SERVED: March 7, 2006

NTSB Order No. EA-5213

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of March, 2006

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-17022
v.)	
)	
LOUIS A. LUYTEN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the April 15, 2005 written initial decision and order of Chief Administrative Law Judge William E. Fowler, Jr. in this matter, issued following an evidentiary hearing held on December 7, 2004.¹ The Administrator's order suspended respondent's flight instructor

¹ The law judge's initial decision is attached.

certificate for 60 days, based on an alleged violation of 14 C.F.R. § 61.189(a).² The law judge affirmed the alleged violation of § 61.189(a), and affirmed the 60-day suspension. We deny respondent's appeal.

The Administrator's December 8, 2003 order³ alleged that respondent provided ground training on four separate occasions and flight training on three separate occasions for student Kelly Cornell. The order alleged that respondent failed to sign Ms. Cornell's pilot logbook after respondent provided this training. The order concluded that respondent had violated § 61.189(a). The law judge affirmed this order, holding that Ms. Cornell had successfully completed the ground and flight training, and that respondent offered no compelling justification for withholding his signature from Ms. Cornell's logbook.

Both parties agree that respondent provided ground and flight instruction as alleged in the Administrator's complaint.

² Title 14 C.F.R. § 61.189(a) provides:

§ 61.189 Flight instructor records.

(a) A flight instructor must sign the logbook of each person to whom that instructor has given flight training or ground training.

³ Pursuant to the Board's Rules of Practice in Air Safety Proceedings found at 49 C.F.R. § 821.31, the Administrator filed her December 8, 2003 Order of Suspension as her complaint before the Board on December 30, 2003.

Respondent, however, argues that the FAA's enabling statute⁴ does not allow the Administrator to take action against an instructor's certificate on the basis of § 61.189(a), because § 61.189(a) "cannot affect safety in air commerce or air transportation." Respondent's Brief at 2. Respondent argues that his failure to sign Ms. Cornell's logbook after completion of her training actually *enhanced* safety in air commerce or air transportation, because Ms. Cornell had to repeat the training with another instructor in order to obtain a signature. Id. Finally, respondent contends that he substantially complied with the requirements of § 61.189(a) in that his e-mail correspondence and detailed invoices for payments constitute a "signature" for purposes of logbook endorsement. Id.⁵

⁴ Respondent cites 49 U.S.C. § 44709(b)(1)(A) as the statute that does not allow the Administrator to suspend a certificate based on a § 61.189(a) violation. Section 44709(b)(1)(A) provides:

§ 44709. Amendments, modifications, suspensions, and revocations of certificates

(b) *Actions of the Administrator.*--The Administrator may issue an order amending, modifying, suspending, or revoking--

(1) any part of a certificate issued under this chapter if--

(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action....

⁵ Respondent's brief specifically lists each of these three

The Administrator contests each of these arguments. The Administrator maintains that she may take enforcement action against a certificate holder for a violation of § 61.189(a), and that respondent's attempt to convince the Board that e-mail correspondence and invoices for payment constitute a "signature" is unavailing, because it ignores the requirements of 14 C.F.R. § 61.51.⁶

We reject respondent's argument that the Administrator may not take action against a pilot's certificate for a § 61.189(a) violation because such a violation has no safety impact. First, we note that the Board has no authority to review the permissible extent of FAA regulatory authority. As we said in

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issues as grounds for reversing the law judge's decision. In another section of his brief, respondent also states that he did not sign Ms. Cornell's logbook because Ms. Cornell did not keep her appointments with him for signing the logbook. Respondent's Brief at 4-6. However, this argument is irrelevant, because both Ms. Cornell and respondent agree that Ms. Cornell's boyfriend presented her logbook to respondent for the purpose of endorsement. Respondent provides us with no reason to overturn that decision in his appeal. See Initial Decision at 2.

⁶ Section 61.51(a) requires pilots to record all flight training and aeronautical experience in a logbook. Section 61.51(b) contains a detailed list of information that each pilot must include in his or her logbook entry. Section 61.51(h)(2)(i) requires logbook entries for each pilot training session to be "endorsed in a legible manner by the authorized instructor." The Administrator argues that a flight instructor's lack of compliance with § 61.189(a) could cause that instructor's student to violate the detailed requirements of § 61.51.

Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972) (responding to argument on whether a regulation is adequately based on air safety), "the Board's authority to review regulatory violations alleged by the Administrator extends solely to the question of whether the cited regulations have in fact been violated." However, to the extent this issue is properly before us, the law judge thoroughly reviewed and ruled on this issue when he denied respondent's pretrial motion to dismiss. In that order, the law judge held that respondent's challenge of the Administrator's authority was merely an attempt to overlook the plain language of § 61.189(a), and ignored the text of the Aviation Instructor's Handbook, FAA Publication No. FAA-H-8083-9 (1999), available at <http://www.faa.gov/library/manuals/aviation/media/FAA-H-8083-9.pdf>, which clearly directs instructors to endorse students' logbooks upon completion of training. The law judge also agreed with the Administrator's interpretation of the regulatory history of § 61.189(a), which states that the main purpose for promulgating that regulation was to hold flight instructors accountable for the public safety implications of their instruction. See 20 Fed. Reg. 3028, 3029 (1955) (Notice of Proposed Rulemaking published by the Civil Aeronautics Board).⁷ We agree with the law judge's reasoning and conclusion

⁷ The Notice of Proposed Rulemaking provides the following

that the statutory and regulatory authority of the FAA allows the Administrator to take certificate action against a flight instructor for failing to sign a student's logbook.

We also find respondent's argument that e-mail correspondence or signed invoices constitute a signature under § 61.189 to be incongruous. We agree that not all logbooks must be in an exclusive, standardized format; however, the availability of a pilot's complete logbook, including the required signatures, is critical to the FAA's ability to evaluate a multitude of aspects that play a role in safe flight. In Administrator v. Slotten, 2 NTSB 2503 (1976), the Board stated that failure to endorse a document is cause for concern:

We do not agree ... that failure to endorse the certificate was a "mere technicality" or "harmless oversight." Proper endorsement of all prescribed documents is a legitimate regulatory requirement whose purpose is to give notice to all concerned parties, such as F.A.A. inspectors, that the airman is qualified for the operation in which he is engaged.

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purpose for the logbook regulation at issue:

This requirement [to endorse students' logbook records] will make it possible to give proper credit for good instruction as well as to place responsibility for student accidents attributable to improper or incompetent instruction.

20 Fed. Reg. 3029 (1955). Such a statement clearly identifies a safety rationale. Similarly, in Administrator v. Blair, NTSB Order No. EA-4253 at 2-3 (1994), we recognized that instructor accountability was the purpose of a logbook endorsement under a similar regulation.

Id. at 2505. Overall, a conclusion that scattered items such as copies of e-mail correspondence and invoices constitute a properly signed logbook entry would directly disregard the importance of maintaining an accurate, complete logbook.

Because we find that nothing in respondent's appeal brief demonstrates reversible error in the law judge's resolution of all relevant issues, we deny respondent's appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 60-day suspension of respondent's flight instructor certificate shall begin 30 days after the service date indicated on this opinion and order.⁸

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.

⁸ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).